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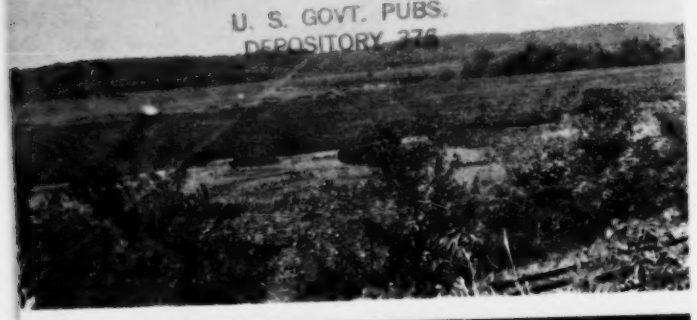


YOU AND THE CORPS OF ENGINEERS

Produced Under the Direction of the:
U.S. ARMY CORPS OF ENGINEERS
Rock Island District

US Army Corps
of Engineers
Rock Island District

D103.2:

QUESTIONS

1. ARE YOU PLANNING WORK IN A RIVER, STREAM, LAKE OR WETLAND?
2. WHAT ARE PUBLIC WATERS?
3. WHAT IS THE FEDERAL GOVERNMENT, U.S. ARMY CORPS OF ENGINEERS INVOLVEMENT IN REGULATING CONSTRUCTION IN PUBLIC WATERS?
4. WHAT ARE SECTIONS 9 AND 10 OF THE RIVER AND HARBOR ACT OF 1899?
5. WHAT IS SECTION 404 OF THE CLEAN WATER ACT?
6. WHAT IS A REGIONAL PERMIT?
7. WHAT IS A NATIONWIDE PERMIT?
8. WHAT SHOULD AN INDIVIDUAL DO IF HE OR SHE IS PLANNING WORK THAT MAY REQUIRE A PERMIT TO SHOW THAT THE PLANNED WORK HAS RECEIVED THE APPROVAL OF THE GENERAL PUBLIC?
9. WHAT IS CONSIDERED IN THE EVALUATION OF A PERMIT APPLICATION?
10. WHAT CAN YOU DO TO HELP?

CORPS OF ENGINEERS REGULATORY PROGRAM

1 Answers to the questions at the top of this page are contained in this pamphlet which explains the regulatory program of the U.S. Army Corps of Engineers, what it is, how it came about, how it may affect you and what you as a concerned American can do to help. The pamphlet is directed toward those individuals, companies, corporations, and government bodies planning construction activities in a river, stream, lake, or wetland located within the jurisdictional boundaries of the Rock Island District, U.S. Army Corps of Engineers.

2 PUBLIC WATERS? The work "public" is an English word derived from the French word "populis", meaning the people. Used as an adjective it is a word describing something, for example-water; to be of, relating to, or affecting all of the people, or the whole area of a nation, state, locatlity, community, etc. Accordingly, "public waters" may be thought of as those waters which are not only used by and enjoyed by one individual or concern, but also by neighbors, friends, communities, etc., or the public in general.

The Congress of the United States has enacted laws to protect and preserve these public waters, and to insure that our country's water resources are used in the best interests of its people. For the purposes of the Department of the Army regulatory functions, these public waters are termed "navigable waters of the United States" (the traditional navigable waters) and "waters of the United States" (those waters defined in Section 404 of the Clean Water Act noted as 404 waters). Paragraphs 4A and 5A of this pamphlet explain more fully the definition of the two terms.

3 CORPS OF ENGINEERS INVOLVMENT. The basis of the U.S. Army Corps of Engineers regulatory function over public waterways was formed in 1899 when Congress passed the Rivers and Harbors Act of 3 March 1899. Until 1968, the Rivers and Harbors Act of 1899 was administered to protect only navigation and the navigable capacity of this nation's waters. In 1968, in response to a growing national concern for environmental values, the policy for review of permit applications with respect to Sections 9 and 10 of the Rivers and Harbors Act was revised to include additional factors besides navigation. These additional factors included: fish and wildlife, conservation, pollution, aesthetics, ecology, and general public interest. This new type of reveiw was identified as a "public interest review".

The Corps of Engineers regulatory functions was then expanded in 1972 when Congress passed the Federal Water Pollution Control Act Amendments of 1972, specifically Section 404 of the Act. The purpose of the Federal Water Pollution Control Act was to restore and maintain the chemical, physical, and biological integrity of this nation's waters. Section 402 of the Act established the National Pollutant Discharge Elimination System (NPDES) to regulate industrial and municipal source discharges of pollutants into the nation's waters. The NPDES permit program is administered by an appropriate state agency or the Unied States Environmental Protection Agency and should not be confused with the Corps of Engineers Section 404 permit program. The Federal Water Pollution Control Act was further amended in 1977 and given the name of "The Clean Water Act". Section 404 of the Clean Water Act established a permit program to be administered by the Corps of Engineers to regulate the non-point source discharges of dredged or fill material into waters of the United States.

4 SECTIONS 9 AND 10. Section 9 of the Rivers and Harbors Act of 1899 requires a permit from the Corps of Engineers to construct any dam or dike in a "navigable water of the United States". Bridges and causeways constructed in "navigable waters of the United States" also require permits under Section 9, but the authority to issue those permits was transferred to the United States Coast Guard in 1966 when the United States Department of Transportation was created.

Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403) prohibits the creation of any obstruction or alteration in a "navigable water of the United States" unless authorized by Congress or a Department of the Army permit.

Secions 9 and 10 of the Rivers and Harbors Act of 1899 extend only over "navigable waters of the United States" (color coded on the District map inside the pamphlet). Structures or work outside the limits defined for navigable waters of the United States will require a Section 10 permit if the structure or work affect the course, location, or condition of water body is such a manner as to impact on the navigable capacity of the water body. The law applies to all structures from the smallest recreational dock to the largest commercial dock, and includes any dredging or excavation, as well as bank protection.

4A NAVIGABLE WATERS OF THE UNITED STATES [TRADITIONAL]. These waters are administratively defined to mean waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce up to the head of navigation. A determination of navigability, once made, applies laterally over the entire surface of the water body to the ordinary high water mark (O.H.W.). The O.H.W. mark for inland fresh waters is the line on the shores established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving, changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas. Section 10 or Section 10/404 permits are required for construction activities in these waters. Waters determined to be "navigable waters of the United States" in the Rock Island District are color coded on the District map and include:

a. Mississippi River*-throughout the Rock Island District.

b. Illinois River*-throughout the Rock Island District.

IOWA

c. Des Moines River-from its mouth to mile 315.0 at Fort Dodge, Iowa.

d. Iowa River-from its mouth to mile 3.0 near Toolesboro, Iowa.

ILLINOIS

e. Rock River *-throughout the Rock Island District.

f. Galena River-from its mouth to mile 4.0 at Galena, Illinois.

g. Fox River*-throughout the Rock Island District.

h. Iroquois River*-throughout the Rock Island District.

i. Kankakee River*-throughout the Rock Island District.

j. LaMoine River-from its mouth into Hancock County.

k. Mackinaw River-from its mouth into McLean County.

l. Salt Creek (Tributary to Sangamon River)-from its mouth to mile 88.9 in McLean County.

m. Sugar Creek (Tributary to Sangamon River)-from its mouth to mile 70.0 in McLean County.

n. Sangamon River-from its mouth into McLean County.

o. Spoon River-from its mouth to mile 120.0, in Peoria County.

p. Pecatonica River*-throughout the Rock Island District.

q. Illinois and Michigan Canal*

*Navigability extends into other districts.

5 SECTION 404. Section 404 of the Clean Water Act (PL 92-500, 86 Stat. 816, 33 U.S.C. 1344) authorizes the Secretary of the Army, acting through the Chief of Engineers, to regulate the discharge of dredged or fill material into waters of the United States.

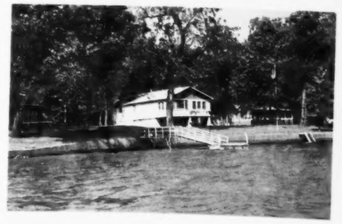
Initially, the Corps of Engineers limited its regulatory authority under Section 404 to "navigable waters of the United States", waters which are defined as those waters which are presently used, were used in the past, or could be used with reasonable improvements to transport interstate commerce (traditional). Limiting the Corps' authority under Section 404 to "navigable waters of the United States" was successfully challenged in the U.S. District Court for the District of Columbia. On March 27, 1975 the Court directed the Corps of Engineers to extend its responsibility to regulate the discharge of dredged or fill material under Section 404 to all "waters of the United States" (404) and to revise its regulations accordingly.

The Court's ruling increased the Corps' permit and regulatory jurisdiction under Section 404 dramatically, extending jurisdiction from "navigable waters of the United States" (traditional) to all "waters of the United States" (404).

5A WATERS OF THE UNITED STATES [404]. For purposes of Section 404 of the Clean Water Act, these waters are administratively defined for inland fresh waters as follows: (1) the traditional "navigable waters of the United States" including adjacent wetlands; (2) all tributaries to "navigable waters of the United States" including adjacent wetlands (manmade drainage and irrigation ditches excavated on dry land are not considered "waters of the United States" under this definition); (3) interstate waters and their tributaries, including adjacent wetlands; and (4) other waters of the United States, such as, isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters the degradation and destruction of which could affect interstate commerce. The landward Section 404 regulatory limit for non-tidal waters in the absence of adjacent wetlands, is the ordinary high water mark (defined in paragraph 4A). Wetlands bordering contiguous or neighboring waters of the United States are considered "adjacent wetlands;" which are subject to regulations pursuant to Section 404. "Wetlands" are areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

5B PHASED PROGRAM. The regulation and enforcement under Section 10 of the Rivers and Harbors Act of 1899 is essentially unchanged; however, the dramatic expansion of the regulatory jurisdiction areas under Section 404 of the Clean Water Act required the implementation of an effective transitional program. The Corps of Engineers chose to exert this jurisdiction in a three-phase program, adopted to permit reasonable and manageable implementation, insuring that the water quality of public waters was protected from the irresponsible and unregulated discharge of dredged or fill material that could permanently destroy or alter the character of valuable resources. The last phase of the program became effective on July 1, 1977, when the Corps began exercising regulatory authority under Section 404 of the Clean Water Act to the fullest extent of the jurisdictional limits set forth in the Act.

6 REGIONAL PERMITS. Included in the Corps Programs for exercising permit jurisdiction under both Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act is the regional permit program. Regional permits are issued for certain clearly described categories of structures, discharges, and/or work, when those activities are substantially similar in nature, cause only minimal adverse environmental impact when performed separately, and cause only minimal adverse cumulative effect on the environment. Regional permits are for specific regions of the country. In the Rock Island District, regional permits have been issued authorizing work such as small boat docks and small bank protection projects within specified areas. Individual activities included under those activities authorized by such regional permits do not require individual permit processing; therefore, approval may be issued in a short period of time. Specific information about regional permit activities may be obtained from the Rock Island District Office.



7 NATIONWIDE PERMITS. Nationwide permits are Department of the Army authorizations that were incorporated in and issued by the Corps regulations. The purpose of these nationwide permits is to allow non-controversial, environmentally insignificant activities to continue with a minimum of governmental interferance. The nationwide permits authorize certain structures, discharges, and/or work affecting "navigable waters of the United States;" and "waters of the United States" throughout the nation. Individual activities must satisfy certain conditions in order to be considered as work authorized by a nationwide permit. Activities that satisfy the requirements and conditions of a nationwide permit do not require individual processing or sumittal of a formal application for permit. Specific information about nationwide permit activities may be obtained from the Rock Island District Office.

8 WHAT TO DO? Persons planning any type of work within "navigable waters of the United States" (traditional) or within wetlands adjacent to a "navigable water of the United States" are advised to contact the Rock Island District Office of the Corps of Engineers before commencing any work. Upon request, application forms, instructions, and other assistance needed will be provided.

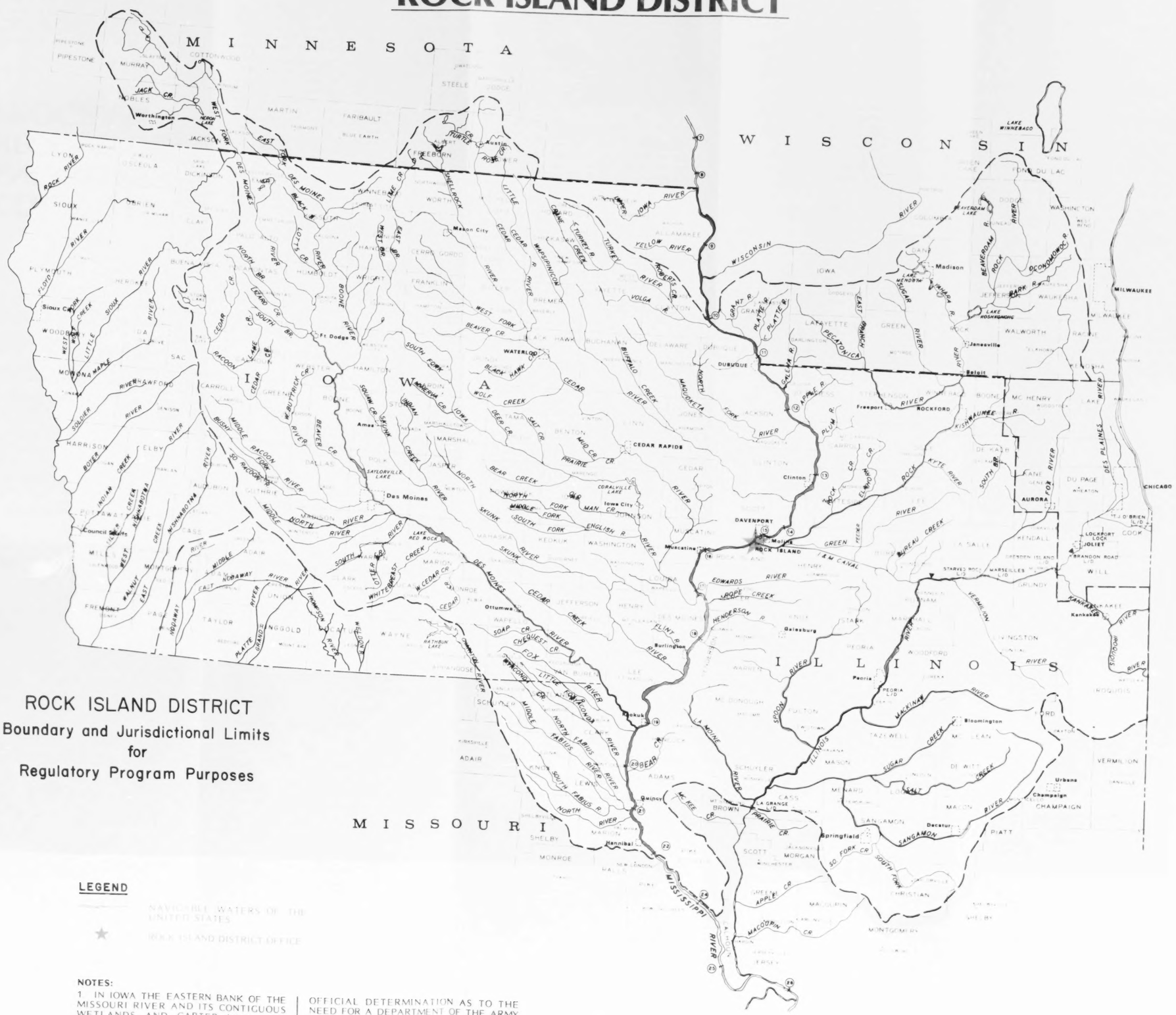
Persons planning any type of work involving the discharge of dredged or fill material into "waters of the United States" (404) are requested to submit a request for a Section 404 permit determination to the Rock Island District Office with a brief description of the project and location drawings. Examples of Section 404 activities would be site development fills,causeways or road fills, dams and dikes, artificial islands, property protection and/or reclamation devices such as riprap, seawalls, breakwaters and bulkheads, fills, beach protection, levees, sanitary landfills, and backfill required for the placement of structures such as sewage treatment facilities. Upon receipt of a request for determination,a determination of the Section 404 requirements will be made and the party notified of the actions necessary for compliance with Section 404 of the Clean Water Act.

9 CONSIDERATIONS. To make formal application for a Section 10 or Section 404 permit, an application should be prepared according to instructions which will be furnished upon request.

In evaluating a permit application, the Corps of Engineers will thoroughly analyze the impacts of the proposed activity upon the public's interest. In determining the public interest, the Corps will consider all factors of the proposed activity, including conservation, economics, aesthetics, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply and water quality, energy needs, safety, food production, and the needs and welfare of the people. A Public Notice is issued on most permit applications. Significant comments received from individuals, groups, or government agencies will be furnished the applicant for his comment/rebutal and/or resolution. Sometimes a public hearing will also be held before the District Engineer issues or denies a permit. Major controversial cases may be referred to higher headquarters for a decision. The decision to issue a permit will be based on the benefits which may accrue from the proposal. This will be weighed against any foreseeable detrimments,and a permit will be issued when its issuance is found not contrary to the public interest.

U.S. ARMY CORPS OF ENGINEERS

ROCK ISLAND DISTRICT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IOWA
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Austin
Mason City
Ft Dodge
Sioux City
Ames
Des Moines
Council Bluffs
Ottumwa
Burlington
Keokuk
Quincy
Hannibal
WATERLOO
DUBUQUE
CEDAR RAPIDS
Clinton
DAVENPORT
Muscatine
ROCK ISLAND
Galesburg
Peoria
Bloomington
Springfield
Decatur
Champaign
Urbana
Madison
Janesville
Beloit
Freeport
ROCKFORD
MILWAUKEE
CHICAGO
AURORA
Kankakee
Joliet
LAKE WINNEBAGO
MISSISSIPPI RIVER
MISSOURI RIVER
ROCK RIVER
IOWA RIVER
WISCONSIN RIVER
ILLINOIS RIVER
DES MOINES RIVER
CEDAR RIVER
SKUNK RIVER
YELLOW RIVER
TURKEY RIVER
MAQUOKETA RIVER
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ROCK R.
BEAVERDAM R.
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KISHWAUKEE R.
FOX RIVER
DES PLAINES RIVER
I & M CANAL
EDWARDS RIVER
HENDERSON R.
ROPE CREEK
SPOON RIVER
LA MOINE RIVER
MACKINAW RIVER
SUGAR CREEK
VERMILION
SANGAMON
KICKAPOO CR.
BEAR CR.
MC KEE CR.
PRAIRIE CR.
SO. FORK CR.
APPLE CR.
MACOUPIN CR.
BUFFALO CREEK
BEAVER CR.
WEST FORK
SOUTH FORK
BLACK HAWK
WOLF CREEK
DEER CR.
SALT CR.
MUD CR.
BEAR CREEK
NORTH RIVER
MIDDLE RIVER
SOUTH RIVER
WHITEBREAST
CHEQUEST CR.
SOAP CR.
FOX RIVER
LITTLE FOX R.
NORTH FABIUS RIVER
SOUTH FABIUS R.
LAKE RED ROCK
SAYLORVILLE LAKE
CORALVILLE LAKE
LAKE MENDOTA
LAKE MONONA
LAKE KOSHKONONG
STARVED ROCK L&D
MARSEILLES L&D
DRESDEN ISLAND L&D
BRANDON ROAD L&D
LOCKPORT LOCK
JOLIET
KANKAKEE
PEORIA L&D
LA GRANGE L&D
MONTGOMERY
YORKVILLE
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